

ORIGINAL

FILED
DISTRICT COURT OF GUAM

NOV 10 2005

**MARY L.M. MORAN
CLERK OF COURT**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM**

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, ZHONGFENG XUE,
enter into the following plea agreement:

22 1. The defendant agrees to enter a guilty plea to Count 1 of an Indictment charging him
23 with False Swearing in Immigration Matter, in violation of Title 18, United States Code, §
24 1546(a). The United States will move to dismiss Count 2 at sentencing.

25 2(a) The defendant, ZHONGFENG XUE, understands that the maximum sentence for
26 Perjury is a term of ten (10) years imprisonment, a \$250,000 fine, and a \$100 special assessment
27 fee, which must be paid at the time of sentencing. Any sentence imposed may include a term of
28 supervised release of not more than three (3) years in addition to such terms of imprisonment.

1 Defendant understands that if he violates a condition of supervised release at any time prior to
2 the expiration of such term, the court may revoke the term of supervised release and //
3 sentence him up to an additional two (2) years of incarceration pursuant to 18 U.S.C.
4 § 3583(e)(3).

5 2(b) If defendant pleads guilty to the charge as set forth above, the government will
6 recommend that defendant receive minimum term of incarceration recommended by the
7 Sentencing Guidelines.

8 2(c) The government will recommend a fine within the Sentencing Guidelines range. If
9 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
10 full disclosure of his financial status to the United States Attorney's Office by completing a
11 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
12 Defendant understands that, by law, interest accrues on any remaining balance of the debt.

13 3. The defendant understands that to establish a violation of False Swearing in
14 Immigration Matter as charged pursuant to 18 U.S.C. § 1546(a), the government must prove each
15 of the following elements beyond a reasonable doubt:

16 First: the defendant subscribe as true a false statement;

17 Second: the defendant acted with knowledge that the statement was untrue;

18 Third: the statement was material to Immigration and Naturalization Services
19 activities or decisions;

20 Fourth: the statement was made under oath; and,

21 Fifth: the statement was made on a document required by immigration laws or
22 regulations prescribed thereunder.

23 4. The defendant agrees that the advisory Sentencing Guidelines apply to this offense.

24 The defendant also understands that the facts he stipulates to herein will be used, pursuant to
25 1B1.2, in calculating the applicable guidelines level. The Government and the defendant
26 stipulate to the following facts for purposes of the Sentencing Guidelines:
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28 (a) The defendant was born in 1969, and is a citizen of Peoples Republic of China.

 (b) If the defendant cooperates with the United States by providing information

1 concerning the unlawful activities of others, the government agrees that any self-incriminating
2 information so provided will not be used against defendant in assessing his punishment, and
3 therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used
4 in determining the applicable guidelines range.

5 (c) The facts charged in Count 1 of the Indictment are true and accurate.

6 (d) The defendant understands that notwithstanding any agreement of the parties, the
7 United States Probation Office will make an independent application of the Sentencing
8 Guidelines. The defendant acknowledges that should there be discrepancies in the final
9 sentencing guidelines range projected by his counsel or any other person, such discrepancies are
10 not a basis to withdraw his guilty plea.

11 5. In exchange for the Government's concessions in this plea agreement, the defendant
12 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
13 the sentence imposed in this case. He agrees to waive all constitutional challenges to the validity
14 of the Sentencing Guidelines. The defendant agrees that the government has bargained for a
15 criminal conviction arising from his conduct. If at any time defendant's guilty plea or conviction
16 is rejected, withdrawn, vacated or reversed, for whatever reason, or if any change of law renders
17 the conduct for which he was convicted to be non-criminal, defendant agrees that he will enter a
18 guilty plea to another charge encompassing the same or similar conduct. In such event,
19 defendant waives any objections, motions or defenses based upon the Statute of Limitations,
20 Speedy Trial Act, or constitutional restrictions as to the time of bringing such charges.

21 6. The defendant acknowledges that he has been advised of his rights as set forth below
22 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
23 had sufficient opportunity to reflect upon, and understands the following:

24 (a) The nature and elements of the charge and the mandatory minimum penalty provided
25 by law, if any, and the maximum possible penalty provided by law;

26 (b) His right to be represented by an attorney;

27 (c) His right to plead not guilty and the right to be tried by a jury and at that trial, the

1 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
2 and the right not to be compelled to incriminate himself, that is, the right not to testify;

3 (d) That if he pleads guilty, there will not be a further trial of any kind on the charges to
4 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
5 up, the right to a trial;

6 (e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure
7 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
8 does not accept the sentencing recommendations of the government or his counsel;

9 (f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
10 about the offenses to which he has pled, under oath, and that if he answers these questions under
11 oath, on the record, his answers may later be used against him in prosecution for perjury or false
12 statement if an answer is untrue;

13 (g) That he agrees that the plea agreement is voluntary and not a result of any force,
14 threats or promises apart from this plea agreement;

15 (h) The defendant is satisfied with the representation of his lawyer and feels that his
16 lawyer has done everything possible for his defense; and

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1 (i) That this plea agreement has been translated into his native language and he fully
2 understands it.

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4 DATED: 10/11/05

ZHONG PENG XUE

ZHONGFENG XIE
Defendant

6
7 DATED: 10/10/05

JOHN GORMAN
Attorney for Defendant

12 DATED: 11-10-05

By:

FREDERICK A. BLACK
Assistant U.S. Attorney

15 DATED: 11-10-05

RUSSELL C. STODDARD
First Assistant U.S. Attorney